

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PEDRO MENDEZ,

Petitioner,

vs.

BRUCE A. SPANNER,

Respondent.

NO. 4:16-cv-05016-JLQ

ORDER STRIKING DOCUMENT AS
DUPLICATIVE, ORDER ADOPTING
REPORT AND RECOMMENDATION
AND ORDER TO DISMISS PETITION

BEFORE THE COURT is Magistrate Judge Rodgers' Report and Recommendation to dismiss the Petition. ECF No. 6. Petitioner, a prisoner at the Washington State Penitentiary, is proceeding *pro se* and has paid the \$5.00 filing fee to commence this action. Respondent has not been served.

On June 8, 2016, Petitioner electronically submitted a document titled "Pedro Mendez's Answer to Report And Recommendation, And To Amend Petition Replacing Bruce A. Spanner, To SHAWN P. SANT Prosecutor For Franklin County As A Proper Party." ECF No. 9. This document consists of 30 pages, including an "Affidavit of Service By Mailing." On June 13, 2016, Petitioner electronically submitted the identical document, although "SMJ" was scratched out of the case number and replaced with "JLQ." ECF No. 10. It was not necessary to submit the document a second time.

Consequently, **IT IS ORDERED** the Clerk of Court shall **STRIKE** ECF No. 10, as duplicative. The Court will liberally construe Petitioner's document as his

ORDER STRIKING DOCUMENT AS DUPLICATIVE, ORDER ADOPTING REPORT
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1 “Objections,” ECF No. 9, to the Report and Recommendation.

2 Petitioner’s submission, however, is not responsive to the Report and
3 Recommendation. As previously advised, a petitioner for habeas corpus relief must name
4 the state officer having custody of him as the respondent to the petition. Rule 2(a), Rules
5 Governing Section 2254 Cases in the United States District Courts; *Stanley v. California*
6 *Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). This person is typically is the warden
7 of the facility in which the petitioner is incarcerated. *Brittingham v. United States*, 982
8 F.2d 378, 379 (9th Cir. 1992). Therefore, Petitioner’s request to replace the named
9 Respondent with a county prosecuting attorney is frivolous.

10 The Court lacks personal jurisdiction over Respondent Judge Bruce A. Spanner,
11 *Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989). Although granted the opportunity
12 to do so, Petitioner did not remedy this defect. Furthermore, Petitioner admits that he did
13 not appeal his 1994 Franklin County conviction and sentence for multiple counts of
14 murder to the state’s highest court, which is a pre-requisite to federal habeas relief. *See*
15 *O’Sullivan v. Boerkel*, 526 U.S. 838, 842-43 (1999).

16 Much of Petitioner’s submission is copies of documents filed in state court,
17 seeking his release. ECF No. 9 at 3-29. This is not responsive to the Report and
18 Recommendation. Petitioner purposefully did not file an amended petition on the form
19 provided by the Court. ECF No. 9 at 2.

20 Therefore, for the reasons set forth above and by Magistrate Judge Rodgers in both
21 the Order to Amend, ECF No. 4, and the Report and Recommendation, ECF No. 6, **IT IS**
22 **ORDERED** that the Report and Recommendation is **ADOPTED in its entirety** and the
23 Petition, ECF No. 5, shall be **DISMISSED WITHOUT PREJUDICE** for lack of
24 personal jurisdiction over Respondent.

25 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
26 Order, enter judgment of dismissal of the Petition and the claims therein without
27 ORDER STRIKING DOCUMENT AS DUPLICATIVE, ORDER ADOPTING REPORT
28 AND RECOMMENDATION AND ORDER TO DISMISS PETITION -- 2

1 prejudice, forward a copy to Petitioner, and close the file. The Court further certifies that
2 there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c);
3 Fed. R.App. P. 22(b).

4 **DATED** this 16th day of June 2016.

5 s/ Justin L. Quackenbush
6 JUSTIN L. QUACKENBUSH
7 SENIOR UNITED STATES DISTRICT JUDGE
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